

NOTE: CHANGES MADE BY THE COURT

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

ALEXSAM, INC., Plaintiff,

V.

GREEN DOT CORPORATION,
NEXT ESTATE
COMMUNICATIONS, INC., and
DOES 1 through 10, inclusive,

Case No. 2:15-cv-05742 CAS
(PLAx)

PROTECTIVE ORDER

Judge Christina A. Snyder

Complaint Filed: June 12, 2015 (Los Angeles Superior Court)

Date Removed: July 29, 2015

GREEN DOT CORPORATION and
NEXT ESTATE
COMMUNICATIONS, INC.,
Cross-Complainants

Cross-Complainants,

V.

ALEXSAM, INC.,

Cross-Defendant.

1 TABLE OF CONTENTS

2 1. PURPOSES AND LIMITATIONS.....	1
3 2. DEFINITIONS.....	1
4 3. SCOPE.....	3
5 4. DURATION	3
6 5. DESIGNATING PROTECTED MATERIAL	4
7 A. CONFIDENTIALITY LEVELS	4
8 1. Confidential	4
9 2. Highly Confidential - Outside Attorneys' Eyes Only.....	4
10 3. Highly Confidential - Source Code.....	5
11 B. EXERCISE OF RESTRAINT AND CARE IN DESIGNATING MATERIAL FOR	
12 PROTECTION.....	5
13 C. MANNER OF DESIGNATIONS	6
14 1. Designation Of Documents	6
15 2. Designation Of Transcripts	7
16 3. Designation Of Other Tangible Items	8
17 D. TIMING OF DESIGNATIONS	8
18 E. INADVERTENT FAILURES TO DESIGNATE	8
19 F. CHALLENGING CONFIDENTIALITY DESIGNATIONS	8
20 1. Timing of Challenges.....	8
21 2. Meet and Confer Requirement.....	9
22 3. Judicial Intervention.....	9
23 6. ACCESS TO AND USE OF PROTECTED MATERIAL	10
24 A. STORAGE OF PROTECTED MATERIAL	10
25 B. DISCLOSURE OF INFORMATION OR ITEMS DESIGNATED "CONFIDENTIAL" 10	
26 C. DISCLOSURE OF INFORMATION OR ITEMS DESIGNATED "HIGHLY	
27 CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY" AND "HIGHLY	
28 CONFIDENTIAL – SOURCE CODE"	11
D. PROCEDURES FOR APPROVING OR OBJECTING TO DESIGNATING EXPERTS	
FOR DISCLOSURE OF INFORMATION OR ITEMS DESIGNATED AS HIGHLY	
CONFIDENTIAL	12

1	1. Procedure For Designating Experts.....	12
2	2. Procedure For Objecting To Designations	13
3	7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.....	14
4	8. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION.....	14
5	9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL	15
6	10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL	16
7	11. FILING PROTECTED MATERIAL.....	17
8	12. FINAL DISPOSITION	17
9	13. MISCELLANEOUS PROVISIONS.....	17
10	A. RIGHT TO FURTHER RELIEF.	17
11	b. Right to Assert Other Objections.	18
12	c. Export Control.....	18
13	d. Notices	18
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **1. PURPOSES AND LIMITATIONS**

2 Plaintiff Alexsam, Inc. (hereinafter, "Alexsam") and Defendants Green Dot
3 Corporation, Next Estate Communications, Inc. (hereinafter, "Green Dot")
4 (collectively, the "Parties") are in agreement that disclosure and discovery activity in
5 this action are likely to involve production of confidential, proprietary, or private
6 information for which special protection from public disclosure and from use for any
7 purpose other than prosecuting this litigation may be warranted. Accordingly, the
8 Parties have stipulated to be bound by the following Protective Order ("Order") in
9 this action. This Order is not intended to confer blanket protections on all
10 disclosures or responses to discovery and the protection it affords from public
11 disclosure and use extends only to the limited information or items that are entitled
12 to confidential treatment under the applicable legal principles.

13 **2. DEFINITIONS**

14 2.1. Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2. Counsel (without qualifier): Outside Counsel of Record and House
17 Counsel (as well as their support staff).

18 2.3. House Counsel: House Counsel who seek access to "HIGHLY
19 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this
20 matter.

21 2.4. Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery in
23 accordance with this Order.

24 2.5. Disclosure or Discovery Material: all items or information discovered or
25 disclosed pursuant to Rules 26 through 35, inclusive, of the Federal Rules
26 of Civil Procedure, regardless of the medium or manner in which it is
27 generated, stored, or maintained (including, among other things, testimony,

1 transcripts, and tangible things), that are produced or generated in
2 disclosures or responses to discovery in this matter.

3 2.6. Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who: (a) has been retained by a Party or its
5 counsel to serve as an expert witness or as a consultant in this action; (b) is
6 not a current employee of a Party or of a Party's competitor; and, (c) at the
7 time of retention, is not anticipated to become an employee of a Party or of
8 a Party's competitor.

9 2.7. House Counsel: attorneys who are employees of a party to this action.
10 House Counsel does not include Outside Counsel of Record or any other
11 outside counsel.

12 2.8. Non-Party: any natural person, partnership, corporation, association, or
13 other legal entity not named as a Party to this action.

14 2.9. Outside Counsel of Record: attorneys who are not employees of a party to
15 this action but are retained to represent or advise a party to this action and
16 have appeared in this action on behalf of that party or are affiliated with a
17 law firm which has appeared on behalf of that party.

18 2.10. Party: any party to this action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record
20 (and their support staffs).

21 2.11. Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this action.

23 2.12. Professional Vendors: persons or entities that provide litigation support
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or
26 medium) and their employees and subcontractors.

27 2.13. Protected Material: any Disclosure or Discovery Material that is
28

designated as belonging to one of the defined categories.

2.14. Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Order cover not only Protected Material (as defined above), but also: (a) any information copied or extracted from Protected Material; (b) all copies, excerpts, summaries, or compilations of Protected Material; and (c) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

The protections conferred by this Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party; and, (c) any information that is independently developed without use of or reliance upon Protected Material produced by another Party.

Further, the protections conferred by this Order apply only to Disclosure or Discovery Material and to court filings that might reveal Protected Material, and do not apply to evidence presented at any court hearings or proceedings. Any such use of Protected Material shall be governed by a separate order from the judicial officer conducting the hearing or proceeding, at the appropriate time.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing or a court order otherwise directs. Final disposition shall be
2 deemed to be the later of (a) dismissal of all claims and defenses in this action, with
3 or without prejudice; and, (b) final judgment herein after the completion and
4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
5 including the time limits for filing any motions or applications for extension of time
6 pursuant to applicable law.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 For the purposes of identifying Protected Material, Disclosure or Discovery
9 Materials shall be classified as follows:

10 **a. CONFIDENTIALITY LEVELS**

11 The following confidentiality designations shall be assigned as applicable to
12 Disclosure or Discovery Material and, where appropriate, be used as the descriptor
13 affixed to the material produced. Nothing in the following sub-paragraphs of this
14 Paragraph 5.a. should be taken to mean that information of the types referenced
15 therein are necessarily relevant or otherwise subject to production in this case, the
16 parties reserving their rights to assert such objections as may be appropriate as to
17 any particular information. The Confidentiality Levels to be used are defined as
18 follows:

- 19 1. Confidential: non-public information (regardless of how it is generated,
20 stored or maintained) or tangible things that the designating party
21 reasonably believes in good faith constitutes or reveals proprietary or
22 confidential research, development, business, financial, sales, marketing,
23 or commercial information.
- 24 2. Highly Confidential - Outside Attorneys' Eyes Only: extremely sensitive
25 non-public information (regardless of how it is generated, stored or
26 maintained) or tangible things that the designating party reasonably
27 believes in good faith is not only "Confidential", as that term is defined

herein, the disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means, including but not limited to: licensing agreements, settlement agreements and settlement terms, proprietary customer, supplier and distributor information, trade secrets, sensitive financial data, marketing and business plans or strategies for existing or new products or processes, non-privileged information related to pending unpublished patent applications, and research, development, design and technical information for existing or new products or processes, and sensitive information of Defendants' competitors. Only Disclosure or Discovery Material containing extremely sensitive and confidential information and whose disclosure to other parties to this action would create a substantial risk of serious competitive harm that could not be avoided by less restrictive means may properly be assigned this designation under this Order.

16 3. Highly Confidential - Source Code: extremely sensitive non-public
17 information (regardless of how it is generated, stored or maintained) or
18 tangible things identified as computer programming, code and other types
19 of sensitive information typically referred to as “source code,” or that
20 contain computer code, the disclosure of which to another Party or Non-
21 Party would create a substantial risk of serious harm that could not be
22 avoided by less restrictive means. Only Disclosure or Discovery Material
23 containing computer code may properly be assigned this designation under
24 this Order.

b. EXERCISE OF RESTRAINT AND CARE IN DESIGNATING MATERIAL FOR PROTECTION

1 Each Party or Non-Party that designates information or items for protection
2 under this Order must take care to limit any such designation to specific material
3 that qualifies under the appropriate standards. To the extent it is practical to do so,
4 the Designating Party must designate for protection only those parts of material,
5 documents, items, or oral or written communications that qualify – so that other
6 portions of the material, documents, items, or communications for which protection
7 is not warranted are not swept unjustifiably within the ambit of this Order.
8 Indiscriminate, or routinized designations are prohibited. Designations that are
9 shown to be clearly unjustified or that have been made for an improper purpose
10 (e.g., to unnecessarily encumber or retard the case development process or to impose
11 unnecessary expense and burden on other parties) are forbidden.

12 **c. MANNER OF DESIGNATIONS**

13 1. Designation Of Documents

14 For information in documentary form (e.g., paper or electronic documents, but
15 excluding transcripts of depositions or other pretrial or trial proceedings), the
16 Producing Party shall affix the legend to each page that contains protected material.
17 If only a portion or portions of the material on a page qualifies for protection, the
18 Producing Party also must clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins) and must specify, for each portion, the level of
20 protection being asserted.

21 A Party or Non-Party that makes original documents or materials available for
22 inspection need not designate them for protection until after the inspecting Party has
23 indicated which material it would like copied and produced. During the inspection
24 and before the designation, all of the material made available for inspection shall be
25 deemed “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY.”
26 After the inspecting Party has identified the documents it wants copied and produced,
27 the Producing Party must determine which documents, or portions thereof, qualify

28

1 for protection under this Order. Then, before producing the specified documents, the
2 Producing Party must affix the appropriate legend to each page that contains
3 Protected Material. If only a portion or portions of the material on a page qualifies
4 for protection, the Producing Party also must clearly identify the protected portion(s)
5 (e.g., by making appropriate markings in the margins) and must specify, for each
6 portion, the level of protection being asserted.

7 2. Designation Of Transcripts

8 For testimony given in deposition, the Designating Party shall endeavor, in
9 good faith, to identify on the record, before the close of the deposition, all protected
10 testimony and specify the level of protection being asserted. When in the good faith
11 view of the Designating Party it is impractical to identify separately each portion of
12 testimony that is entitled to protection, the Designating Party may invoke on the
13 record (before the deposition is concluded) a right to have up to 30 days to identify
14 the specific portions of the testimony as to which protection is sought and to specify
15 the level of protection being asserted, and until such timely designation occurs the
16 entire deposition shall be deemed “HIGHLY CONFIDENTIAL – OUTSIDE
17 ATTORNEYS’ EYES ONLY.” Only those portions of the testimony that are
18 appropriately designated for protection within the 30 days shall be covered by the
19 provisions of this Order. Alternatively, a Designating Party may specify, at the
20 deposition or up to 30 days afterwards if that period is properly invoked, that the
21 entire transcript shall be treated as appropriate for the designated category.

22 Transcripts containing Protected Material shall have an obvious legend on the
23 title page that the transcript contains Protected Material, and the title page shall be
24 followed by a list of all pages (including line numbers as appropriate) that have been
25 designated as Protected Material and the level of protection being asserted by the
26 Designating Party. The Designating Party shall inform the court reporter of these
27 requirements.

28

1 3. Designation Of Other Tangible Items

2 For information produced in some form other than documentary and for any
3 other tangible items, the Producing Party shall affix in a prominent place on the
4 exterior of the container or containers in which the information or item is stored the
5 legend "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL." If only a portion or
6 portions of the information or item warrant protection, the Producing Party, to the
7 extent practicable, shall identify the protected portion(s) and specify the level of
8 protection being asserted.

9 d. **TIMING OF DESIGNATIONS**

10 Except as otherwise provided in this Order or as otherwise stipulated or
11 ordered, Disclosure or Discovery Material that qualifies for protection under this
12 Order must be clearly so designated before the material is disclosed or produced.

13 e. **INADVERTENT FAILURES TO DESIGNATE**

14 If corrected, an inadvertent failure to designate qualified information or items
15 does not, standing alone, waive the Designating Party's right to secure protection
16 under this Order for such material. Upon correction of a designation, the Receiving
17 Party must make reasonable efforts to assure that the material is treated in
18 accordance with the provisions of this Order.

19 f. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

20 1. Timing of Challenges.

21 Any Party or Non-Party may challenge a designation of confidentiality at any
22 time **within the discovery period established by the District Judge**. Unless a
23 prompt challenge to a Designating Party's confidentiality designation is necessary to
24 avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
25 significant disruption or delay of the litigation, a Party does not waive its right to
26 challenge a confidentiality designation by not mounting a challenge promptly after
27 the original designation is disclosed.

1 2. Meet and Confer Requirement.

2 The Challenging Party shall initiate the dispute resolution process by
3 providing written notice of each designation it is challenging and describing the
4 basis for each challenge. The Parties shall attempt to resolve each challenge in good
5 faith and must begin the process by conferring directly (in voice to voice dialogue;
6 other forms of communication are not sufficient) within 10 calendar days of the date
7 of service of notice. In conferring, the Challenging Party must explain the basis for
8 its belief that the confidentiality designation was not proper and must give the
9 Designating Party an opportunity to review the designated material, to reconsider the
10 circumstances, and, if no change in designation is offered, to explain the basis for
11 the chosen designation. A Challenging Party may proceed to the next stage of the
12 challenge process only if it has engaged in this meet and confer process first or
13 establishes that the Designating Party is unwilling to participate in the meet and
14 confer process in a timely manner.

15 3. Judicial Intervention.

16 If the Parties cannot resolve a challenge without Court intervention, the
17 Challenging Party shall file and serve a motion to challenge a confidentiality
18 designation within 30 calendar days of the initial notice of challenge or within 14
19 calendar days of the parties agreeing that the meet and confer process will not
20 resolve their dispute, whichever is later. Each such motion must be accompanied by
21 a competent declaration affirming that the movant has complied with the meet and
22 confer requirements imposed in the preceding paragraph. Any such motion must be
23 made in strict compliance with Local Rules 37-1 and 37-2 (including the joint
24 stipulation requirement).

25 The burden of persuasion in any such challenge proceeding shall be on the
26 Designating Party. All parties shall continue to afford the material in question the
27 level of protection to which it is entitled under the Producing Party's designation

1 until the Court rules on the challenge.

2 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

3 A Receiving Party may use Protected Material that is disclosed or produced
4 by another Party or by a Non-Party in connection with this case only for
5 prosecuting, defending, or attempting to settle this litigation. Such Protected
6 Material may be disclosed only to the categories of persons and under the conditions
7 described in this Order.

8 **a. STORAGE OF PROTECTED MATERIAL**

9 Protected Material must be stored and maintained by a Receiving Party at a
10 location and in a secure manner that ensures that access is limited to the persons
11 authorized under this Order.

12 **b. DISCLOSURE OF INFORMATION OR ITEMS DESIGNATED “CONFIDENTIAL”**

13 Unless otherwise ordered by the Court or permitted in writing by the
14 Designating Party, a Receiving Party may disclose any information or item
15 designated “CONFIDENTIAL” only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
17 as employees of said Outside Counsel of Record to whom it is reasonably
18 necessary to disclose the information for this litigation and who have signed
19 the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
20 Ex. A;

21 (b) the officers, directors, and employees (including House Counsel) of the
22 Receiving Party to whom disclosure is reasonably necessary for this litigation
23 and who have signed the “Acknowledgment and Agreement to Be Bound”
24 (Ex. A);

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this litigation and who have signed the
27 “Acknowledgment and Agreement to Be Bound” (Ex. A);

- (d) the Court and its personnel;
- (e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Ex. A);
- (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Ex. A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

c. DISCLOSURE OF INFORMATION OR ITEMS DESIGNATED “HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY” AND “HIGHLY CONFIDENTIAL – SOURCE CODE”

Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Ex. A;

(b) House Counsel of the Receiving Party, (1) to whom disclosure is

1 reasonably necessary for this litigation, and (2) who has signed the
2 “Acknowledgment and Agreement to Be Bound” (Ex. A). Notwithstanding
3 any of the foregoing, documents and information (A) designated HIGHLY
4 CONFIDENTIAL – SOURCE CODE or (B) identified by the Designating
5 Party as constituting licensing agreements, settlement agreements and/or
6 settlement terms with third parties may not be shown or disclosed to House
7 Counsel of a Receiving Party;

8 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
9 necessary for this litigation, (2) who have signed the “Acknowledgment and
10 Agreement to Be Bound” (Ex. A), and (3) as to whom the procedures set forth
11 below, have been followed;

12 (d) the Court and its personnel;

13 (e) court reporters and their staff, professional jury or trial consultants, and
14 Professional Vendors to whom disclosure is reasonably necessary for this
15 litigation and who have signed the “Acknowledgment and Agreement to Be
16 Bound” (Ex. A); and

17 (f) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information.

19 **d. PROCEDURES FOR APPROVING OR OBJECTING TO DESIGNATING EXPERTS**
20 **FOR DISCLOSURE OF INFORMATION OR ITEMS DESIGNATED AS HIGHLY**
21 **CONFIDENTIAL**

22 A Party that makes a request and provides the information specified in the
23 following paragraphs may disclose the subject Protected Material to the identified
24 Expert unless, within 10 calendar days of delivering the request, the Party receives a
25 written objection from the Designating Party. Any such objection must set forth in
26 detail the grounds on which it is based.

27 1. Procedure For Designating Experts

Unless otherwise ordered by the Court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL first must make a written request to the Designating Party that (1) sets forth the full name of the Expert and the city and state of his or her primary residence, (2) attaches a copy of the Expert’s current resume, (3) identifies the Expert’s current employer(s), and (4) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

2. Procedure For Objecting To Designations

A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion seeking permission from the Court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties’ efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure. Additionally, any such motion must be made in strict compliance with Local Rules 37-1 and 37-2 (including the joint stipulation requirement).

In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under

1 the safeguards proposed) outweighs the Receiving Party's need to disclose the
2 Protected Material to its Expert.

3

4 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
5 **PRODUCED IN OTHER LITIGATION**

6 If a Party is served with a subpoena or a court order issued in other litigation
7 that compels disclosure of any information or items designated in this action as
8 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification
10 shall include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order
12 to issue in the other litigation that some or all of the material covered by the
13 subpoena or order is subject to this Order. Such notification shall include a
14 copy of this Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the Designating Party whose Protected Material may be affected.¹

17 The Designating Party shall bear the burden and expense of seeking
18 protection in that court of its confidential material – and nothing in these provisions
19 should be construed as authorizing or encouraging a Receiving Party in this action to
20 disobey a lawful subpoena issued in another action.

21

22 **8. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
23 **PRODUCED IN THIS LITIGATION**

24 The terms of this Order are applicable to information produced by a Non-
25 Party in this action and designated as "CONFIDENTIAL," or "HIGHLY
26 CONFIDENTIAL." Such information produced by Non-Parties in connection with
27 this litigation is protected by the remedies and relief provided by this Order. Nothing

28 ¹ The purpose of imposing these duties is to alert the interested parties to the existence of
this Order and to afford the Designating Party in this case an opportunity to try to protect its
confidentiality interests in the court from which the subpoena or order issued.

1 in these provisions should be construed as prohibiting a Non-Party from seeking
2 additional protections.

3 In the event that a Party is required, by a valid discovery request, or Court
4 Order to produce a Non-Party's confidential information in its possession, and the
5 Party is subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

- 7 (a) promptly notify in writing the Requesting Party and the Non-Party that
8 some or all of the information requested is subject to a confidentiality
9 agreement with a Non-Party;
- 10 (b) promptly provide the Non-Party with a copy of the Order in this
11 litigation, the relevant discovery request(s), and a reasonably specific
12 description of the information requested; and
- 13 (c) make the information requested available for inspection by the Non-
14 Party.

15 If the Non-Party fails to object or seek a protective order from this Court
16 within 30 days of receiving the notice and accompanying information, the Receiving
17 Party may produce the Non-Party's confidential information responsive to the
18 discovery request. If the Non-Party timely objects or seeks a protective order, the
19 Receiving Party shall not produce any information in its possession or control that is
20 subject to the confidentiality agreement with the Non-Party before a determination
21 by the Court. Absent a court order to the contrary, the Non-Party shall bear the
22 burden and expense of seeking protection in this Court of its Protected Material.

23 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED
24 MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Order, the Receiving Party must immediately (a) notify in writing the Designating
28

1 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
2 unauthorized copies of the Protected Material, (c) inform the person or persons to
3 whom unauthorized disclosures were made of all the terms of this Order, and (d)
4 request such person or persons to execute the “Acknowledgment and Agreement to
5 Be Bound” that is attached hereto as Exhibit A. Nothing in this Paragraph 9 shall be
6 taken to limit the rights of an aggrieved Designating Party with respect to such
7 unauthorized disclosure, with all such rights being reserved.

8 **10. INADVERTENT PRODUCTION OF PRIVILEGED OR
9 OTHERWISE PROTECTED MATERIAL**

10 When a Producing Party gives notice to a Receiving Party that certain
11 inadvertently produced material is subject to a claim of privilege or other protection,
12 the obligations of the Receiving Party are (A) those set forth in Federal Rule of Civil
13 Procedure 26(b)(5)(B), or (B) should the Receiving Party, in an exercise of good
14 faith, reasonably conclude that produced material contains information arguably
15 subject to a claim of privilege or other protection, the Receiving Party shall
16 immediately provide specific written notification to the Producing Party of the same
17 and await instructions from the Producing Party as to whether such production was
18 inadvertent and whether such material should be returned to the Producing Party; if
19 such instructions are received within 10 business days of receipt of notice given
20 under this sub-paragraph 10(B), the Receiving Party will immediately follow the
21 procedures set forth in the second and third sentences of Rule 26(b)(5)(B). This
22 provision is not intended to modify whatever procedure may be established in an e-
23 discovery order that provides for production without prior privilege review. Pursuant
24 to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement
25 on the effect of disclosure of a communication or information covered by the
26 attorney-client privilege or work product protection, the parties may incorporate
27 their agreement in the Order.

28

1 **11. FILING PROTECTED MATERIAL**

2 If any papers to be filed with the Court contain information and/or documents
3 that have been designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,”
4 the papers shall be filed in accordance with Local Rule 79-5. **Good cause must be**
5 **shown to file any document(s) under seal.**

6 **12. FINAL DISPOSITION**

7 Within 60 days after the final disposition of this action, as defined in
8 paragraph 4, each Receiving Party must return all Protected Material to the
9 Producing Party or destroy such material. As used in this subdivision, “all Protected
10 Material” includes all copies, abstracts, compilations, summaries, and any other
11 format reproducing or capturing any of the Protected Material. Whether the
12 Protected Material is returned or destroyed, the Receiving Party must submit a
13 written certification to the Producing Party (and, if not the same person or entity, to
14 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
15 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
16 that the Receiving Party has not retained any copies, abstracts, compilations,
17 summaries or any other format reproducing or capturing any of the Protected
18 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
19 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
20 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
21 work product, and consultant and expert work product, even if such materials
22 contain Protected Material. Any such archival copies that contain or constitute
23 Protected Material remain subject to this Order.

24 **13. MISCELLANEOUS PROVISIONS**

25 **a. RIGHT TO FURTHER RELIEF.**

26 Nothing in this Order abridges the right of any person to seek its modification
27 by the Court in the future. This Order may be modified by the Parties by written
28

1 agreement, but such modification shall have no force or effect unless approved by
2 the Court.

3 **b. Right to Assert Other Objections.**

4 No Party waives any right it otherwise would have to object to disclosing or
5 producing any information or item on any ground not addressed in this Order.
6 Similarly, no Party waives any right to object on any ground to use in evidence of
7 any of the material covered by this Order.

8 **c. Export Control.**

9 Disclosure of Protected Material shall be subject to all applicable laws and
10 regulations relating to the export of technical data contained in such Protected
11 Material, including the release of such technical data to foreign persons or nationals
12 in the United States or elsewhere. The Producing Party shall be responsible for
13 identifying any such controlled technical data, and the Receiving Party shall take
14 measures necessary to ensure compliance.

15 **d. Notices**

16 Notices given pursuant to this Agreement to (1) parties, shall be sent to their
17 counsel of record herein; and (2) non-parties shall be sent to their reasonably
18 ascertainable counsel or, barring the same, their in-house counsel, with best, good
19 faith efforts to ensure that notice was duly received.

20

21

22 IT IS SO ORDERED.

23

24 DATED: October 25, 2016



Paul L. Abrams
United States Magistrate Judge

25

26

27

28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of

declare under penalty of perjury that I have read in its entirety and understand the Protective Order (“Order”) that was issued by the United States District Court for the Central District of California on in the case of *Alexsam, Inc. v. Green Dot Corporation et al.*, Case No. 2:15-cv-05742 CAS (PLAx). I agree to comply with and to be bound by all the terms of this Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Order to any person or entity except in strict compliance with the provisions of this Order. I further agree that any documents, materials or information furnished to me will be used by me only for the purposes of this litigation and for no other purpose, and will be returned by me to the person who furnished such documents, materials, or information to me upon conclusion of the case. I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Order, even if such enforcement proceedings occur after termination of this action.

Signature: _____

Date Signed: _____

Printed Name:

City, State: